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FISCAL IMPACT STATEMENT

LS 7856

BILL NUMBER: HB 1705

NOTE PREPARED: Jan 22, 2007

BILL AMENDED:

SUBJECT: Penalties for Killing Law Enforcement Officers.

FIRST AUTHOR: Rep. Walorski

FIRST SPONSOR:

BILL STATUS: As Introduced

FUNDS AFFECTED: ☒ **GENERAL**
☐ **DEDICATED**
☐ **FEDERAL**

IMPACT: State & Local

Summary of Legislation: This bill has the following provisions:

- A. *Capital Litigation Expense Fund* – It establishes the Capital Litigation Expense Fund to reimburse prosecutors for expenses incurred in prosecuting a capital case and requires the Criminal Justice Institute to administer the fund. It provides that capital litigation expenses for employing an investigator or additional deputy prosecuting attorney are only reimbursable if the prosecuting attorney does not already employ sufficient staff to prosecute the capital case and carry out the other responsibilities of the office. It makes an annual appropriation of \$150,000 to fund the Capital Expense Litigation Fund.
- B. *Public Defense Fund* – It requires the Public Defender Council to reimburse 100% of a county's expenditures for indigent defense services in a capital case.
- C. *Murder Against a Law Enforcement Officer* – It requires a prosecuting attorney who has reason to believe that a defendant committed murder against a law enforcement officer acting in the line of duty to seek the death penalty or a sentence of life without parole, and requires a defendant found to have committed this offense to receive either a sentence for murder or a sentence of life imprisonment without parole. It removes juvenile court jurisdiction over a child alleged to have committed the murder of a law enforcement officer acting in the line of duty.
- D. It makes other changes and conforming amendments.

Effective Date: July 1, 2007.

Explanation of State Expenditures: *Capital Litigation Expense Fund* – This bill would make an annual appropriation of \$150,000 to a Capital Litigation Expense Fund that would be used to reimburse the office of the prosecuting attorney for reasonable expenses incurred in prosecuting a capital case. The Criminal

Justice Institute would administer the fund. Reimbursement would be based on whether the ability of a prosecuting attorney to prosecute a death penalty case would be severely hampered without employment of an investigator or the appointment of a deputy prosecuting attorney. An additional deputy prosecuting attorney may not be paid more than the average per diem equal to the regular salary of a full-time prosecuting attorney. The annual salary paid to a full-time prosecuting attorney in FY 2007 is \$115,282, and the per diem is \$461 based on a 250-day work year.

Public Defense Fund – The bill is projected to increase expenditures in the Public Defense Fund by \$500,000 annually.

Currently, counties are reimbursed for 50% of the costs incurred in providing legal defense to indigent defendants in death penalty cases. This bill would require the Public Defense Fund to reimburse the counties for 100% of the costs of indigent defense. The Public Defense Fund receives \$5.4 M annually from the state General Fund. Besides reimbursing counties for 50% of the costs of indigent defense in death penalty cases, it reimburses counties for 40% of the costs associated with indigent defense in all other felony cases. If counties were reimbursed for 100% of the costs of a death penalty case, the added costs would be double the current reimbursements for capital cases. Costs for which counties are reimbursed include both the trial itself and the direct appeal from the case.

Reimbursements for Capital Cases	Reported Reimbursements @ 50%	If Reimbursements were @ 100%
FY 2002	473,317	946,634
FY 2003	342,464	946,634
FY 2004	585,961	1,171,922
FY 2005	499,488	998,976
FY 2006	633,541	1,267,082
Average	506,954	1,066,250

The number of requests for a death penalty have declined from roughly 15 per year on average between 1991 and 1995 to five between 2001 and 2005.

Requests for Death Penalty by Calendar Year and by 5-Year Average																
CY	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006
Requests	23	11	9	17	15	9	10	15	7	11	6	4	3	6	6	5
5-Year Avg.	15					10					5					

Murder Against a Law Enforcement Officer – A mandated death penalty case when a law enforcement officer is killed in the line of duty would increase costs for state General Fund.

State expenditures depend on the outcome of the criminal trial. If a prosecuting attorney requests the death penalty and the court imposes a death sentence on a defendant, then state expenditures will be less than when a prosecuting attorney seeks and the court imposes life imprisonment without parole. And a determinant sentence of 65 years where the offender is released after 32½ years for good behavior requires less expenditures than the other two sentences. However, the combined costs for the state agencies and county governments for a death penalty case, even when the offender is executed, exceeds the costs of a trial where

the most serious sentence would be life without parole or a determinant sentence of 65 years.

In the following analysis, LSA staff compared the costs that the state assumes for state assistance to the counties in the trial stage, and the staff costs during direct appeal, post conviction relief, and federal habeas corpus review. The average age of 84 offenders who were sentenced to death was 30 at the time when a request for a death penalty was made against them.

LSA assumed that convicted offenders would:

- spend an average period of 16 years on death row before being executed if the death penalty was imposed;
- serve 32½ years of a sentence if sentenced to 65 years in prison since most offenders reduce their sentences by one day for each day that they comply with prison facility codes of behavior;
- remain in DOC facilities until the age of 77 if sentenced to life without parole.

Because these costs occur at different points in time, a net present value was prepared for each cost stream assuming an annual inflation rate of 5%. The following table presents the net present value of these costs.

Post Trial Costs to the State of Sentencing Options for a 30-Year-Old Offender Sentenced for Aggravated Murder			
		<u>Net Present Value for:</u>	
<u>Sentence</u>	<u>Number of Years of Incarceration</u>	<u>State Expenditures</u>	<u>State and County Expenditures</u>
Death Penalty	16*	\$592,858	\$758,243
Life Without Parole	47	\$616,756	\$657,028
65 Years with 50% Credit Time	32.5	\$494,507	\$534,779
* Based on 15 offenders sentenced to death who appealed execution and were executed.			

The following variables are included in this analysis.

Cost of Health Care – It is assumed that the health care costs rise substantially in the later years of an offender's life. Consequently, the costs to the Department of Correction (DOC) will increase substantially for older offenders. The data in the following table was used to account for the added cost to DOC for the later years of an offender who is sentenced to life without parole.

Estimated Costs of Health Care by Age Group	
<u>Age Group</u>	<u>Estimated Cost</u>
18 - 24	\$ 1,095
25 - 44	\$ 1,844
45 - 64	\$ 4,319
over 65	\$ 8,589

Cost of Incarceration – The average annual expenditure for housing offenders (not including health care costs) is based on the average annual adult institution cost in FY 2006 of \$22,734 less the average annual health care costs shown in the table above.

Added Costs for Financial Assistance At Trial - The Public Defense Fund reimburses 50% of the authorized costs to counties when a death penalty trial is occurring and 40% when a noncapital case is being tried. The costs of a death penalty trial are higher because two attorneys are needed and two different trials occur.

The following shows the average costs incurred by the Public Defense Fund for death penalty and life without parole cases under current law. As proposed, the state General Fund would pay for the entire costs of indigent defense in a death penalty case but 40% if the prosecuting attorney seeks life without parole.

Attorneys and Related Costs for Murder Trials		
	<u>Death Penalty</u>	<u>Life Without Parole</u>
Under Current Law	\$107,804	\$27,370
Proposed	\$215,608	no change

Added Costs of Appeals - There are three general stages of review of criminal cases at the state and federal level: direct appeal and post conviction relief at the state level and habeas corpus at the federal level. The Office of the Attorney General represents the state in all three stages of review in death penalty cases, and in direct appeal and habeas corpus if a determinate sentence is imposed. The State Public Defender's office represents convicted offenders requesting indigent counsel in post conviction relief.

The following costs were used to compare the costs between these sentencing options.

State Agency	Function	Death Penalty Trial	Life Without Parole
State Public Defender	Represents convicted offenders requesting indigent counsel in post conviction relief	\$191,182	\$3,724
Office of the Attorney General	Represents the state in all three stages of review in death penalty cases	\$72,503	\$12,004
Department of Correction	Execution costs and annual per diem and medical costs	\$20,588 for execution	annual per diem and medical costs
State Police	Security and appeals at execution	\$4,012	

The following shows the stages of review once the death penalty trial has been completed.

Review Level	Court of Review	Issues Permitted To Be Raised
Direct Appeal	State Supreme Court	Defendant required to show that what happened at trial was legally erroneous. Defendant may not present new evidence.
Post Conviction Relief (PCR)	Trial Court	Newly discovered evidence such as DNA and other issues may be presented.
Subsequent Appeal of PCR	State Supreme Court	Decides on the evidence presented at the PCR review.
Federal Habeas Corpus Review	Seventh Circuit Court of Appeals	Federal courts may not grant relief if the claim was waived in the state court or if the issue was not presented or properly presented in state court.

Explanation of State Revenues:

Explanation of Local Expenditures: Under current law, the prosecuting attorney would not be able to request either the death penalty or life without parole unless one of 16 aggravating circumstances under IC 35-50-2-9 could be cited when a murder occurred.

Background Information: Of the three possible sentencing options for murder, the death penalty is generally the most expensive for trial courts to conduct because two attorneys are required to represent the accused, and a bifurcated trial is conducted to determine guilt or innocence and whether a sentence of death is warranted. Life without parole is the next most expensive option because, while two attorneys are not required for legal representation, a bifurcated trial is also required to determine guilt or innocence and then whether a sentence of life without parole is warranted. Determinate sentencing of between 45 and 65 years is the least expensive option because one trial is conducted and two attorneys are not required to represent the defendant.

The following table summarizes the difference between these three options.

<u>Sentencing Option</u>	<u>Number of Defense Attorneys Needed</u>	<u>Type of Trial Conducted</u>
Death Penalty	Two	Bifurcated - one to determine guilt or innocence and one to determine whether death penalty is warranted; a sentencing hearing is separate.
Life Without Parole	One	Bifurcated - one to determine guilt or innocence and one to determine whether death penalty is warranted; a sentencing hearing is separate.
Determinate Sentence Between 45 and 65 Years	One	A single trial to determine guilt or innocence; a sentencing hearing is separate.

Consequently, the costs of legal representation for a case where the most serious sentence is between 45 and 65 years would likely be lower than the costs of a case involving life without parole.

No information is available on the costs of murder cases in which the most serious sentence was between 45 and 65 years of incarceration. However, at the request of the Criminal Law Study Commission, Legislative Services Agency staff compared the costs of death penalty cases and cases in which life without parole was the most serious outcome that could occur. The following table displays the cost components for a "typical" death penalty trial and a trial where life without parole is the most serious sentence. Under this bill, the state general fund would pay the cost of appeals and the added costs for prosecuting attorneys.

Under this bill, if the prosecuting attorney seeks the death penalty, the state would pay for the entire costs of indigent defense, the added costs of the prosecuting attorney and the costs of appeals. In death penalty cases, the county would still be required to pay for the costs of any juries and the overtime costs for the sheriff's department. If the prosecuting attorney seeks life without parole, there would be no change in the way that the Public Defense Fund reimburses the county.

Cost Components for Murder Trials:				
		<u>Death Penalty</u>		<u>Life Without Parole</u>
To Be Paid by State General Fund	Attorneys and Related Costs*	\$107,804	Paid by Counties	\$27,370
	Cost of Appeals	\$54,355		\$5,466
	Prosecuting Attorney	\$2,340		\$2,948
	Subtotal	\$164,499		\$35,784
Paid by Counties	Jury and Related Costs	\$46,375		\$10,150
	County Sheriff	\$8,472		\$4,380
	Subtotal	\$54,847		\$14,530
	Total Costs	\$219,346		\$50,314
*Current Net Costs After Reimbursement From Public Defense Fund				

The cost of legal representation for a criminal defendant in a death penalty case is four times as expensive as the costs of a criminal trial in which the most serious sentence is life without parole. The costs of a trial where a determinate sentence is the most serious sentence is likely to be less than the costs of a trial in which life without parole is the most serious sentence.

Explanation of Local Revenues:

State Agencies Affected: Criminal Justice Institute, Department of Correction, Office of the Attorney General, Office of the State Public Defender, State Police.

Local Agencies Affected: Trial Courts, County Sheriff.

Information Sources: Indiana Supreme Court; The Application of Indiana's Capital Sentencing Law, Findings of the Indiana Criminal Law Study Commission (January 10, 2002); Website of Clark County (IN) Prosecuting Attorney, <http://www.clarkprosecutor.org/html/death/>; Agency for Healthcare Research and Quality, 2002 Full-Year Consolidated Data File (HC-070), Released December 2004. Medical Expenditure Panel Survey Household Component Data, Generated using MEPSnet/HC, <http://www.meps.ahrq.gov/mepsnet/HC/MEPSnetHC.asp>; Department of Correction.

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